

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANNIE H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-5588-BAT

**ORDER REVERSING THE  
COMMISSIONER’S FINAL DECISION**

Plaintiff appeals the ALJ's decision finding her not disabled. She contends the ALJ erroneously discounted her testimony, misevaluated the medical opinion evidence, formulated an insufficient residual functional capacity (“RFC”) determination, and relied upon vocational expert (“VE”) testimony that failed to include all of her limitations. Dkt. 27 at 3.<sup>1</sup> As discussed below, the Court REVERSES the Commissioner’s final decision and REMANDS the case for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

**BACKGROUND**

In March 2017, Plaintiff applied for benefits, alleging disability as of September 13, 2016. Tr. 200-215. Her applications were denied initially and on reconsideration. Tr. 127-30,

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<sup>1</sup> Plaintiff’s opening brief does not conform to the Court’s scheduling order, which instructs parties to list the disputed issues beginning on the first page of briefing. *See* Dkt. 24 at 2. In the future, counsel should take care to follow the Court’s instructions to avoid a stricken brief.

136-41. The ALJ conducted a hearing in October 2018 (Tr. 32-74) and issued a decision finding Plaintiff not disabled. Tr. 15-26. The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the Commissioner's final decision. Tr. 1-6.

### THE ALJ'S DECISION

The ALJ found:

**Step one:** Plaintiff had not engaged in substantial gainful activity since the alleged onset date.

**Step two:** Plaintiff had the following severe impairments: degenerative disc disease, status post cervical fusion; diabetes; and obesity.

**Step three:** These impairments did not meet or equal the requirements of a listed impairment.

**RFC:** Plaintiff can perform light work, with additional limitations: she can lift/carry 20 pounds occasionally and 10 pounds frequently in an eight-hour workday. She can stand/walk for six hours and sit for six hours in an eight-hour workday. She can occasionally push/pull with the non-dominant right upper extremity. She can occasionally climb ramps and stairs. She can never crawl and climb ladders, ropes, or scaffolds. She can never reach overhead with the non-dominant right arm. She can frequently handle and finger with the non-dominant right hand. She must avoid concentrated exposure to extreme heat, vibration, pulmonary irritants, and hazards such as unprotected heights and moving machinery.

**Step four:** Plaintiff can perform her past work, and is therefore not disabled.

Tr. 15-26.

### DISCUSSION

#### A. Plaintiff's Testimony

The ALJ discounted Plaintiff's testimony on the grounds (1) the medical evidence shows Plaintiff's neck and right arm symptoms improved somewhat with surgery, (2) Plaintiff received minimal treatment for her low back condition and her diabetes stabilized with medication, (3) objective testing showed many normal findings and the deficits that did persist were not disabling but consistent with light work, (4) Plaintiff magnified her symptoms during a

1 consultative examination, (5) Plaintiff's daily activities were more robust than she reported, and  
2 (6) Plaintiff received unemployment benefits during a time she now claims to have been  
3 disabled. Tr. 19-24. An ALJ's reasons to discount Plaintiff's testimony must be clear and  
4 convincing. *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

5 Plaintiff claims the ALJ erred but fails to challenge the ALJ's first three reasons. Dkt. 17  
6 at 4-7. This failure is fatal to her claim because the unchallenged reasons the ALJ articulated are  
7 valid grounds to support the ALJ's determination to discount Plaintiff's testimony. Hence, even  
8 assuming the challenged reasons are erroneous, the error is harmless. *See Carmickle v. Comm'r*  
9 *of Social Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008) (Including an erroneous reason  
10 among other reasons to discount a claimant's credibility does not negate the validity of the  
11 overall credibility determination and is at most harmless error where an ALJ provides other  
12 reasons that are supported by substantial evidence). .

13 **B. Medical Opinion Evidence, RFC, and VE Testimony**

14 The ALJ found the October 2017 opinions of Dr. Gaffield and the State agency  
15 consultant are persuasive and consistent with the record. Tr. 24-25. Plaintiff argues the ALJ  
16 erred because after these opinions were written, more medical evidence was generated. Dkt. 27  
17 at 8-9. The Court rejects the argument to the extent it implies the ALJ did not consider all of the  
18 evidence, because the decision shows the ALJ considered all of the medical evidence in  
19 determining Plaintiff's RFC. *See* Tr. 22-25.

20 Plaintiff also argues the ALJ should have developed the record by obtaining a  
21 consultative psychological examination, because Dr. Gaffield's finding of Waddell's signs  
22 indicates the need for such an examination. Dkt. 27 at 9. However, Dr. Gaffield never assessed  
23 psychological limitations, Plaintiff never alleged psychological conditions or limitations, and

1 Plaintiff cites no evidence of record suggesting she has a psychological limitation. Under these  
2 circumstances, the Court finds the ALJ's duty to develop the record was not triggered by Dr.  
3 Gaffield's mention of Waddell's signs. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir.  
4 2001) ("Ambiguous evidence, or the ALJ's own finding that the record is inadequate to allow for  
5 proper evaluation of the evidence, triggers the ALJ's duty to 'conduct an appropriate inquiry.'"   
6 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996))).

7 Plaintiff also argues the RFC determination fails to account for all assessed limitations,  
8 specifically kneeling, bending, and stooping restrictions. Dkt. 27 at 9. The Court agrees. The  
9 ALJ failed to address the postural limitations of kneeling, bending, or stooping, despite the fact  
10 Dr. Gaffield found Plaintiff was limited to 20 degrees in back extension, 30 degrees in flexion  
11 and 20 degrees in side bending. Tr. 477. Dr. Gaffield stated under the diagnosis section of his  
12 report, Plaintiff has cervical pain with restricted motion and low back pain with "limited range of  
13 motion." Tr. 478. Under postural activities, the doctor stated such activities "can be performed  
14 occasionally limited by her limited lumbar motion." Tr. 478. The ALJ found Dr. Gaffield's  
15 opinion persuasive but failed to include in the RFC the doctor's opinion Plaintiff has limited  
16 lumbar motion, i.e. she has limitations in bending at the waist. *See* Tr. 19. This error is not  
17 harmless because the vocational expert testified "So stooping, bending at the waist. So if they  
18 can do no stooping, they can basically do no work." Tr. 72.

### 19 CONCLUSION

20 The ALJ harmfully erred by failing to address the bending/stooping limitations assessed  
21 by Dr. Gaffield in his report, a report the ALJ found persuasive. Although Plaintiff asks the  
22 Court to remand the case for an award of benefits, the Court finds additional proceedings are  
23 necessary to permit the ALJ to assess whether Plaintiff's stooping/bending limitations are

1 disabling or whether there are jobs she can nonetheless perform. Additional assessment and VE  
2 testimony are required to make findings on this issue and it is thus appropriate that further  
3 administrative proceedings be ordered. For the foregoing reasons, the Commissioner's final  
4 decision is **REVERSED**, and this case is **REMANDED** for further administrative proceedings  
5 under sentence four of 42 U.S.C. § 405(g). On remand, the ALJ shall assess the impact of  
6 Plaintiff's bending/stooping limitation, develop the record and redetermine the RFC as needed,  
7 and proceed to the remaining steps as appropriate.

8 DATED this 29<sup>th</sup> day of March 2021.

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BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge  
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